

**United States Department of Labor
Employees' Compensation Appeals Board**

P.L., Appellant

and

**DEPARTMENT OF COMMERCE, CENSUS
BUREAU, Charlotte, NC, Employer**

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**Docket No. 15-452
Issued: April 16, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 24, 2014 appellant filed a timely application for review from an October 9, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days elapsed from November 12, 2013, the date of the most recent merit decision, to the filing of this appeal, and pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 14, 2010 appellant, then a 58-year-old census clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 8, 2010 she twisted her right knee when she stepped into a dip

¹ 5 U.S.C. § 8101 *et seq.*

in the floor while walking back from a copy center to get labels. She stopped work on July 8, 2010 and returned on July 12, 2010. OWCP accepted appellant's claim for a sprain of the right lateral collateral ligament of the knee on September 30, 2010.

In a report dated September 7, 2010, Dr. Jerry Withrow, Board-certified in family medicine, noted that appellant injured her right knee on July 8, 2010, and reinjured her right knee at home on July 14, 2010. He diagnosed her with right knee strain.

In a diagnostic report dated October 9, 2010, Dr. Victor Ho, a Board-certified radiologist, examined the results of a magnetic resonance imaging (MRI) scan of appellant's right knee. He reported findings of severe tendinopathy and a partial tear of the quadriceps tendon, which was incompletely visualized on the study.

On October 19, 2010 Dr. Thomas Buter, a Board-certified orthopedic surgeon, noted that appellant was not presently working. He stated that her tendon was intact and that surgery was not indicated. Dr. Buter noted that full recovery was expected and that appellant would be left with no permanent disability. He released her to return to work without restrictions.

In a record of a telephone conversation dated April 26, 2011, an OWCP representative noted that appellant stated that, as of late, she was experiencing trouble with her knee and that a physician had advised her that she had a ligament tear. He informed her that he would need to see the medical reports to determine how to proceed.

Appellant submitted physical therapy notes dated between August 20 and September 10, 2010.

A notification of personnel action dated September 25, 2010 noted that appellant had been terminated from the employing establishment due to the expiration of her appointment.

In a record of a telephone conversation dated June 9, 2011, appellant told an OWCP representative that new activities at a local school where she now worked, including walking up and down steps, were causing problems with her knee. The claims examiner advised her that this activity was a new intervening factor and that she would have to pursue a claim against her private-sector employer and bill her private insurance.

On September 26, 2013 appellant filed a claim for recurrence. She explained that the recurrence occurred because she had to stand for a long period. Appellant noted that she had not been informed during initial treatment that favoring her injured leg could cause additional distress. She noted that two years of favoring this leg had resulted in severe lower back pain with a disc out of place and bones on the top half of her body out of alignment. Appellant did not list a specific date of recurrence. A compensation specialist noted that appellant had separated from the employing establishment on September 25, 2010 and that the employing establishment had no knowledge of what other factors may have contributed to her current condition. The specialist stated that no medical documentation had been submitted linking her original injury to her current condition.

By letter dated October 9, 2013, OWCP informed appellant of the evidence necessary to support her claim for recurrence. It noted that she had not submitted medical evidence of her continued treatment from the date she last received treatment in 2010. OWCP afforded appellant

30 days to submit additional evidence and to respond to its inquiries. However, appellant did not submit additional evidence.

By decision dated November 12, 2013, OWCP denied appellant's claim for recurrence. It found that the evidence was not sufficient to establish that she required additional medical treatment due to worsening of her accepted work-related condition, as she had not submitted medical evidence indicating a continued need for medical treatment.

By letter dated November 8, 2013 and received on November 20, 2013, appellant responded to OWCP's inquiries. She stated that an MRI scan had been performed after her initial diagnosis revealing a partially torn tendon, with no follow-up after the MRI scan. Appellant explained that she developed a gait that favored her injured leg, and that this posture eventually required a visit to a physician for realignment and assistance from back pain. She noted that she had been unemployed since the 2010 injury.

In a medical note dated January 31, 2014, Dr. Asim Otey, Board-certified in physical medicine and rehabilitation, referred appellant to physical therapy for evaluation of chronic knee pain with an old quadriceps tear. He diagnosed her with knee strain.

Appellant submitted reports from physical therapists dated February 5 and 20, 2014.

By letter dated September 25, 2014, appellant explained that in 2013 she had to stand for a period and that before the end of the day, she had to leave an event earlier than planned due to the pain. Shortly after OWCP denied her claim for recurrence, participation in a moderate exercise class caused her knee to swell, and she sought treatment at an emergency room. Appellant noted that a physician ordered x-rays of her knee and back, which revealed arthritis and a bone out of alignment at the end of her vertebrae. She further noted that, on the weekend of September 20, 2014, she went to a fair with her granddaughter, and that she had to sit due to the pain in her leg and back. Shortly thereafter, appellant was standing in line at a store when she lost strength in her right leg, and had to catch herself before she fell.

By form letter received on September 29, 2014, appellant requested reconsideration of OWCP's November 12, 2013 decision.

By decision dated October 9, 2014, OWCP denied appellant's request for reconsideration of her claim and did not review the merits of her case. It noted that the January 31, 2014 letter from Dr. Otey was irrelevant to her claim, as it did not contain a rationalized medical explanation as to the relationship of her current condition to the accepted July 8, 2010 incident. OWCP further noted that the reports from a physical therapist were also irrelevant, as they did not constitute medical evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new

evidence not previously considered by OWCP.² Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.³

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁴ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁶

ANALYSIS

OWCP issued a November 12, 2013 decision denying appellant's claim for recurrence, as she did not submit sufficient medical evidence in support of the claim. By form received on September 29, 2014, appellant requested reconsideration of this decision.

As noted above, the Board does not have jurisdiction over the merits of the November 12, 2013 decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of her claim. In her September 29, 2014 request for reconsideration, and in a statement dated September 25, 2014, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

The relevant issue in this case is whether appellant has submitted a physician's reasoned opinion as to the relationship between her current condition and the incident of July 8, 2010.⁷ A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant evidence in this case. The medical report from Dr. Otey dated January 31, 2014 merely referred appellant for physical therapy, with no additional commentary on the issue of how her current condition was causally related to the July 8, 2010 injury. As such, this report was not relevant to the grounds upon which appellant's claim for recurrence was denied and was insufficient to require a merit review of appellant's claim. The physical therapy reports dated February 5 and 20, 2014 were irrelevant, as they did

² 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB 141, 146 (2007).

³ 20 C.F.R. § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

⁴ *See Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁵ *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

⁶ *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

⁷ *See Ronald A. Eldridge*, 53 ECAB 218, 220 (2001).

not constitute probative medical evidence from a physician.⁸ Similarly, appellant's own lay opinion did not constitute medical evidence.⁹

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 9, 2014 is affirmed.

Issued: April 16, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

⁸ See *Vickey C. Randall*, 51 ECAB 357, 360 n.4 (2000).

⁹ See *R.M.*, Docket No. 14-1749 (issued December 23, 2014).